

MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5748

PETITION OF RAY AND SYLVIA LUCERO

(Hearing held May 8, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, June 11, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(1). The petitioners propose to construct a carport addition that requires a variance of two (2) feet as it is within six (6) feet of the side lot line, and of 8.80 feet as it reduces the sum of both side yards to 16.20 feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is twenty-five (25) feet.

The subject property is Lot 2, Block E, Glenfield Manor Subdivision, located at 12515 Heurich Road, Silver Spring, Maryland, in the R-90 Zone (Tax Account No. 01460044).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 10 x 21 foot carport addition in the northern side yard.
2. The petitioner testified that the addition would be built on the existing concrete pad and that the roof of the existing carport would be extended to cover the additional area. See, Exhibit Nos. 6(a) and 6(b).
3. The petitioner testified that Heurich Road slopes upward and levels out to the north of his property and that the lots to the north of his property are flat. The petitioner testified that the carport would be built into the slope of the northern side yard.
4. The petitioner testified that the existing carport adjoins a 10-foot easement for a public footpath and that the property faces a large open-space owned by the Board of Education. The petitioner testified that he has spoken with his neighbors and that his neighbors had no concerns about the proposed addition.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no peculiar topographical or other conditions not shared with the neighboring and adjoining properties and that the slope of the petitioner's property does not prevent new construction on the lot.

The Board notes that the size of the petitioner's lot is consistent with the other lots in the neighborhood, as shown on Exhibit No. 8.

Since the petition does not meet the requirements set forth in Section 59-G-1.3(a), the Board did not consider the other requirements for a variance in that section. Accordingly, the requested variances of two (2) feet from the required eight (8) foot side lot line setback and of 8.80 feet from required the twenty-five (25) foot sum of both side yards for the construction of a carport addition are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 11th day of June, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.